

1 CABINET FOR HEALTH AND FAMILY SERVICES

2 Department for Medicaid Services

3 Division of Policy and Operations

4 (Amendment)

5 907 KAR 9:010. Reimbursement for non-outpatient Level I and II psychiatric
6 residential treatment facility services.

7 RELATES TO: KRS 205.520, 216B.450, 216B.455, 216B.459

8 STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 42 C.F.R.
9 440.160, 42 U.S.C. 1396a-d

10 NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family
11 Services, Department for Medicaid Services has responsibility to administer the
12 Medicaid Program. KRS 205.520(3) empowers the cabinet, by administrative regulation,
13 to comply with any requirement that may be imposed or opportunity presented by
14 federal law to qualify for federal Medicaid funds. This administrative regulation
15 establishes Medicaid reimbursement policies for non-outpatient Level I and Level II
16 psychiatric residential treatment facility services provided to a Medicaid recipient who is
17 not enrolled in a managed care organization [~~and both required and optional~~
18 ~~reimbursement policies for Level I and Level II psychiatric residential treatment facility~~
19 ~~services provided to a Medicaid recipient who is enrolled in a managed care~~
20 ~~organization~~].

21 Section 1. Definition (1) "Department" means the Department for Medicaid Services

or its designee.

(2) "Federal financial participation" is defined by 42 C.F.R. 400.203. (3) "Level I PRTF" means a psychiatric residential treatment facility that meets the criteria established in KRS 216B.450(5)(a).

(3) "Level I PRTF" means a psychiatric residential treatment facility that meets the criteria established in KRS 216B.450(5)(a).

(4) "Level II PRTF" means a psychiatric residential treatment facility that meets the criteria established in KRS 216B.450(5)(b).

(5) "Managed care organization" means an entity for which the department has contracted to serve as a managed care organization as defined in 42 C.F.R. 438.2.

(6) "Per diem rate" means a Level I or II PRTF's total daily reimbursement as calculated by the department.

(7) "Recipient" is defined by KRS 205.8451(9).

Section 2. Reimbursement for Level I PRTF Services and Costs. (1) To be reimbursable under the Medicaid Program, Level I PRTF services and associated costs, respectively, shall be provided to or associated, respectively, with a recipient receiving Level I PRTF services in accordance with 907 KAR 9:005.

(2) The department shall reimburse for Level I PRTF services and costs referenced in subsection (4) of this section for a recipient not enrolled in a managed care organization:

(a) At the lesser of:

1. A per diem rate of \$274.01; or

2. The usual and customary charge; and

(b) An amount not to exceed the prevailing charges, in the locality where the Level I PRTF is located, for comparable services provided under comparable circumstances.

(3) The per diem rate referenced in subsection (2) of this section shall be increased each biennium by 2.22 percent.

(4) The per diem rate referenced in subsection (2) of this section, or the usual and customary charge if less than the per diem rate, shall represent the total Medicaid reimbursement for Level I PRTF services and costs:

(a) Including all care and treatment costs;

(b) Including costs for all ancillary services;

(c) Including capital costs;

(d) Including room and board costs; and

(e) Excluding the costs of drugs as drugs shall be:

1. Covered in accordance with 907 KAR 1:019; and

2. Reimbursed via the department's pharmacy program in accordance with 907 KAR 1:018.

Section 3. Reimbursement for Level II PRTF Services and Costs. (1) To be reimbursable under the Medicaid program, Level II PRTF services and associated costs, respectively, shall be provided to or associated, respectively, with a recipient receiving Level II PRTF services in accordance with 907 KAR 9:005.

(2) The department shall reimburse a per diem rate as follows for Level II PRTF services and costs for a recipient not enrolled in a managed care organization:

(a) \$345 for Level II PRTF services to a recipient who meets the rate group one (1) criteria established in subsection (3)(a) of this section;

1 (b) \$365 for Level II PRTF services to a recipient who meets the rate group two (2)
2 criteria established in subsection (3)(b) of this section;

3 (c) \$385 for Level II PRTF services to a recipient who meets the rate group three (3)
4 criteria established in subsection (3)(c) of this section; or

5 (d) \$405 for Level II PRTF services to a recipient who meets the rate group four (4)
6 criteria established in subsection (3)(d) or (e) of this section.

7 (3)(a) Rate group one (1) criteria shall be for a recipient who:

8 1. Is twelve (12) years of age or younger;

9 2. Is male or female; and

10 3.a. Is sexually reactive; or

11 b. (i) Has a severe and persistent aggressive behavior;

12 (ii) Does not have an intellectual or a developmental disability; and

13 (iii) Has an intelligence quotient higher than seventy (70).

14 (b) Rate group two (2) criteria shall be for a recipient who:

15 1. Is twelve (12) years of age or younger;

16 2. Is male or female; and

17 3.a. Is sexually reactive; and

18 b. (i) Has a severe and persistent aggressive behavior;

19 (ii) Does not have an intellectual or a developmental disability; and

20 (iii) Has an intelligence quotient higher than seventy (70).

21 (c) Rate group three (3) criteria shall be for a recipient who:

22 1. Is thirteen (13) years of age or older;

23 2. Is male or female; and

1 3.a. Is sexually reactive; or

2 b. (i) Has a severe and persistent aggressive behavior;

3 (ii) Does not have an intellectual or a developmental disability; and

4 (iii) Has an intelligence quotient higher than seventy (70).

5 (d) Rate group four (4) criteria shall be for a recipient who:

6 1. Is thirteen (13) years of age or older;

7 2. Is male or female; and

8 3.a. Is sexually reactive; and

9 b. (i) Has a severe and persistent aggressive behavior;

10 (ii) Does not have an intellectual or a developmental disability; and

11 (iii) Has an intelligence quotient higher than seventy (70).

12 (e) Rate group four (4) criteria shall be for a recipient who:

13 1. Is under twenty-two (22) years of age;

14 2. Is male or female; and

15 3.a. Is sexually reactive; or

16 b. (i) Has a severe and persistent aggressive behavior;

17 (ii) Has an intellectual or a developmental disability; and

18 (iii) Has an intelligence quotient lower than seventy (70).

19 (4) The per diem rates referenced in subsection (2) of this section, or the usual and
20 customary charge if less than the per diem rate, shall represent the total Medicaid

21 reimbursement for Level II PRTF services and costs:

22 (a) Including all care and treatment costs;

23 (b) Including costs for all ancillary services;

1 (c) Including capital costs;

2 (d) Including room and board costs; and

3 (e) Excluding the costs of drugs as drugs shall be:

4 1. Covered in accordance with 907 KAR 1:019; and

5 2. Reimbursed via the department's pharmacy program in accordance with 907 KAR
6 1:018.

7 (5)(a) The department shall annually evaluate each per diem rate for Level II PRTF
8 services and costs by reviewing the most recent, reliable claims data and cost report
9 data to analyze treatment patterns, technology, and other factors that may alter the cost
10 of efficiently providing Level II PRTF services.

11 (b) The department shall use the evaluation, review, and analysis referenced in
12 paragraph (a) of this subsection to determine if an adjustment to the Level II PRTF
13 reimbursement would be appropriate.

14 Section 4. Cost Reports and Audits. (1)(a) A Level I or II PRTF shall annually submit
15 to the department, within ninety (90) days of the closing date of the facility's fiscal year
16 end, a legible and completed Form CMS 2552-96.

17 (b) The department shall grant a thirty (30) day extension for submitting a legible and
18 completed Form CMS 2552-96 to the department if an extension is requested by a
19 Level I or II PRTF.

20 (2)(a) A Form CMS 2552-96 shall be subject to review and audit by the department.

21 (b) The review and audit referenced in paragraph (a) of this subsection shall be to
22 determine if the information provided is accurate.

Section 5. Access to Level I and II PRTF Fiscal and Services Records. A Level I or II PRTF shall provide, upon request, all fiscal and service records relating to services provided to a Kentucky recipient, to the:

- (1) Department;
- (2) Cabinet for Health and Family Services, Office of Inspector General;
- (3) Commonwealth of Kentucky, Office of the Attorney General;
- (4) Commonwealth of Kentucky, Auditor of Public Accounts;
- (5) Secretary of the United States Department of Health and Human Services; or
- (6) United States Office of the Attorney General.

Section 6. Bed Reserve and Therapeutic Pass Reimbursement. (1) The department's reimbursement for a bed reserve day which qualifies as a bed reserve day pursuant to 907 KAR 9:005 for a recipient not enrolled in a managed care organization shall be:

(a) Seventy-five (75) percent of the rate established in Section 2 or 3 of this administrative regulation if the Level I or II PRTF's occupancy percent is at least eighty-five (85) percent; or

(b) Fifty (50) percent of the rate established in Section 2 or 3 of this administrative regulation if the Level I or II PRTF's occupancy percent is less than eighty-five (85) percent.

(2) The department's reimbursement for a therapeutic pass day which qualifies as a therapeutic pass day pursuant to 907 KAR 9:005 for a recipient not enrolled in a managed care organization shall be:

(a) 100% of the rate established in Section 2 or 3 of this administrative regulation if the Level I or II PRTF's occupancy percent is at least fifty (50) percent; or

(b) Fifty (50) percent of the rate established in Section 2 or 3 of this administrative regulation if the Level I or II PRTF's occupancy percent is below fifty (50) percent.

(3)(a) A Level I or II PRTF's occupancy percent shall be based on a midnight census.

(b) An absence from a Level I or II PRTF that is due to a bed reserve day for an acute hospital admission, a state mental hospital admission, a private psychiatric hospital admission, or an admission to a psychiatric bed in an acute care hospital shall count as an absence for census purposes.

(c) An absence from a Level I or II PRTF that is due to a therapeutic pass day shall not count as an absence for census purposes.

Section 7. Outpatient Services Reimbursement Established in 907 KAR 9:020. The department's reimbursement provisions and requirements regarding outpatient behavioral health services provided by a Level I or II PRTF shall be as established in 907 KAR 9:020.

Section 8. Federal Financial Participation. The department's reimbursement for services pursuant to this administrative regulation shall be contingent upon:~~[A policy established in this administrative regulation shall be null and void if the Centers for Medicare and Medicaid Services:]~~

(1) Receipt of~~[Denies or does not provide]~~ federal financial participation for the reimbursement~~[policy]~~; and ~~[or]~~

(2) Centers for Medicare and Medicaid Services' approval for the reimbursement~~[Disapproves the policy]~~.

1 Section 9.~~[8.]~~ Appeals. A provider may appeal a decision by the department
2 regarding the application of this administrative regulation in accordance with 907 KAR
3 1:671.

4 Section 10.~~[9.]~~ Not Applicable to Managed Care Organizations. ~~[(4)]~~ A managed care
5 organization ~~[may elect to reimburse for Level I or II psychiatric residential treatment~~
6 ~~facility services in accordance with this administrative regulation.~~

7 ~~(2) The reimbursement policies established in this administrative regulation]~~ shall not
8 be required to reimburse in accordance with this administrative regulation for a service
9 covered pursuant to:

10 (1) This administrative regulation; or

11 ~~(2) [apply to a managed care organization, except the requirement that a Level I or II~~
12 ~~PRTF service shall be in accordance with] 907 KAR 9:005 [in order to be reimbursable~~
13 ~~under the Medicaid Program].~~

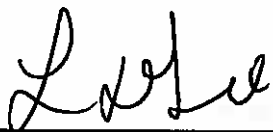
14 Section 11.~~[10.]~~ Incorporation by Reference. (1) "Form CMS 2552-96", August 2010
15 edition, is incorporated by reference.

16 (2) This material may be inspected, copied, or obtained, subject to applicable
17 copyright law, at the Department for Medicaid Services, 275 East Main Street, Frankfort,
18 Kentucky 40621, Monday through Friday, 8:00 a.m. to 4:30 p.m. (18 Ky.R. 601; eff. 10-
19 6-91; Am. 22 Ky.R. 1908; eff. 6-6-96; Recodified from 907 KAR 1:510; eff. 3-20-2012;
20 TAm eff. 3-20-2012; 39 Ky.R. 869; 1479; 1704; eff. 3-8-2013; TAm 7-16-2013.)

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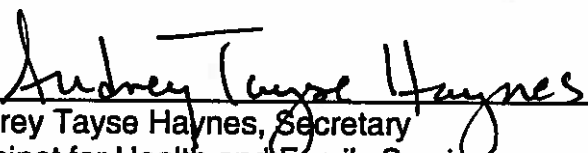
REVIEWED:

3-18-15
Date


Lisa Lee, Commissioner
Department for Medicaid Services

APPROVED:

4/9/15
Date


Audrey Tayse Haynes, Secretary
Cabinet for Health and Family Services

907 KAR 9:010

PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation shall, if requested, be held on May 22, 2015 at 9:00 a.m. in the Health Services Auditorium, Suite B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky, 40621. Individuals interested in attending this hearing shall notify this agency in writing by May 15, 2015 five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business June 1, 2015. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, tricia.orme@ky.gov, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, KY 40601, Phone: (502) 564-7905, Fax: (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation: 907 KAR 9:010

Contact person: Stuart Owen (502) 564-4321

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Department for Medicaid Services' (DMS's) reimbursement provisions and requirements regarding non-outpatient Level I and II psychiatric residential treatment facility services.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish DMS's reimbursement provisions and requirements regarding non-outpatient Level I and II psychiatric residential treatment facility services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing DMS's reimbursement provisions and requirements regarding non-outpatient Level I and II psychiatric residential treatment facility services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the authorizing statutes by establishing DMS's reimbursement provisions and requirements regarding non-outpatient Level I and II psychiatric residential treatment facility services.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment clarifies that this administrative regulation applies to non-outpatient services provided by a Level I or II PRTF.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary as DMS is expanding its coverage and reimbursement scope for outpatient behavioral health services to include such services provided in a Level I or II PRTF. DMS is doing so via new administrative regulations - 907 KAR 9:015 (Coverage provisions and requirements regarding outpatient behavioral health services provided by a Level I or II psychiatric residential treatment facility) and 907 KAR 9:0200 (Reimbursement provisions and requirements regarding outpatient behavioral health services provided by a Level I or II psychiatric residential treatment facility). Consequently, it is necessary to amend this administrative regulation to clarify that its requirements and provisions do not apply to outpatient behavioral health services provided by a Level I or II PRTF.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by clarifying that the requirements and provisions in this administrative regulation does not apply to outpatient behavioral health services provided by a Level I or II PRTF.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the authorizing statutes by clarifying that the requirements and provisions in this administrative regulation do not

apply to outpatient behavioral health services provided by a Level I or II PRTF.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Level I and II PRTFs will be affected by the amendment. Currently, there are twenty-three (23) Level I PRTFs enrolled in the Medicaid Program and zero (0) Level II PRTFs enrolled in the Medicaid Program.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. No action is required.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). No cost is anticipated.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). The entities referenced in paragraph (a) will benefit due to clarify regarding which administrative regulation is applicable to non-outpatient behavioral health services provided in a Level I or II PRTF.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: No cost will be incurred as a result of the amendment.

(b) On a continuing basis: No cost will be incurred as a result of the amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under the Social Security Act, Title XIX and matching funds of general fund appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. Neither an increase in fees nor funding is necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes nor increases any fees.

(9) Tiering: Is tiering applied? Tiering is not applied as the policies apply equally to the regulated entities.

FEDERAL MANDATE ANALYSIS COMPARISON

Administrative Regulation: 907 KAR 9:010

Contact person: Stuart Owen (502) 564-4321

1. Federal statute or regulation constituting the federal mandate. 42 USC 1396a(a)(30)(A).

2. State compliance standards. To qualify as a Level I or II PRTF, a facility must meet the criteria established in KRS 216B.450 through 457.

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1396a(a)(30)(A) requires Medicaid state plans to: "...provide such methods and procedures relating to the utilization of, and the payment for, care and services available under the plan (including but not limited to utilization review plans as provided for in section 1903(i)(4)) as may be necessary to safeguard against unnecessary utilization of such care and services and to assure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area."

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The administrative regulation does not impose stricter than federal requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The administrative regulation does not impose stricter than federal requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Administrative Regulation: 907 KAR 9:010

Contact person: Stuart Owen (502) 564-4321

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services will be affected by the amendment to this administrative regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.520(3).

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendment is not expected to generate revenue for state or local government.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amendment is not expected to generate revenue for state or local government.

(c) How much will it cost to administer this program for the first year? No cost will be incurred as a result of the amendment.

(d) How much will it cost to administer this program for subsequent years? No cost will be incurred as a result of the amendment.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: